(1)

Supreme Court, U.S.
FILED

No. 99 652 AUG 9 1999

IN THE
SUPREME COURT OF THE UNITED STATES

LAWRENCE C. AGEE
PETITIONER

VS.

JAMES MORSE
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE 2ND CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

LAWRENCE C. AGEE
P.O. BOX 475
AUBURN, CALIFORNIA 95604
916-632-9215

34 pp

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QUESTIONS PRESENTED

1. IS A JUDGE ABOVE THE LAW?

2. CAN A JUDGE USE HIS "WIDE DISCRETION" TO OVERRULE THE BILL OF RIGHTS?

3. CAN A JUDGE CLAIM "IMMUNITY" WHEN HE IS VIOLATING AND DELIBERATELY ABUSING THE RIGHTS OF AN AMERICAN CITIZEN?

4. IS THERE ANY APPLICABLE STANDARDS TO WHICH A JUDGE MUST COMPLY, OR CAN A JUDGE DO WHATEVER HE PLEASES?

5. CAN A JUDGE USE THE POWER OF HIS OFFICE AS A WEAPON TO ABUSE AND OPPRESS A CITIZEN WHO HAS NOT COMMITTED ANY WRONGFUL ACT?

6. CAN A JUDGE BE HELD ACCOUNTABLE FOR HIS ACTIONS WHEN HIS ACTIONS ARE CLEARLY INCONSISTENT WITH THE BILL OF RIGHTS?

7. DOES A JUDGE HAVE AN OBLIGATION TO CONDUCT A FAIR TRIAL, TO HEAR AND TAKE UNDER CONSIDERATION BOTH SIDES, OR CAN HE COMPLETELY DISREGARD EVIDENCE PRESENTED BY ONE SIDE?

8. DOES A JUDGE HAVE AN OBLIGATION TO ALLOW A DEFENDANT AN OPPORTUNITY TO PERFORM A DEPOSITION PRIOR TO TRIAL?

9. CAN A JUDGE PREVENT A DEFENDANT FROM CROSS EXAMINATION OF THE KEY WITNESS SO THE DEFENDANT HAD NO OPPORTUNITY TO ALLOW CRITICAL TESTIMONY INTO THE RECORD?

10. CAN A JUDGE TAKE UNDER CONSIDERATION INFORMATION FROM HIS LAW CLERK WHEN THE LAW CLERK KNOWS THE DEFENDANT, AND HAS DEFAMED THE DEFENDANT TO AN OUTSIDE PARTY, AND NOT DISCLOSE THIS TO THE DEFENDANT PRIOR TO TRIAL?

11. IS A PRO SE LITIGANT ENTITLED TO THE SAME RIGHTS AS A CITIZEN REPRESENTED BY AN ATTORNEY?

12. CAN A SUPREME COURT JUDGE SIT ON A LOWER COURT TRIAL, THEN SIT ON THE APPEAL COURT WHERE THE APPEAL IS HEARD (IN THIS CASE THE ONLY COURT OF APPEALS IS THE VERMONT SUPREME COURT, THE VERY COURT WHERE MORSE SITS ON THE BENCH. THE PETITIONER HAS REASON TO BELIEVE THIS CASE WAS DISCUSSED WITH THE OTHER JUSTICES AND HAD EXTREME PREJUDICE AGAINST THE PETITIONER).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

LIST OF PARTIES.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....v

OPINIONS BELOW.....1

JURISDICTION.....2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....3

STATEMENT OF THE CASE.....4

REASONS FOR GRANTING THE WRIT.....9

ARGUEMENT.....10

CONCLUSION.....12

INDEX TO APPENDIXES

APPENDIX A.....ARTICAL ON JAMES MORSE

APPENDIX B.....PRENUPITAL CONTRACT

APPENDIX C.....AGEE/DUMONT LIMITED PARTNERSHIP CONTRACT

APPENDIX D.....APPEAL BRIEF (PREPARED BY ATTORNEY GARETH CALDBECK TO ORIGINAL TRIAL CONDUCTED BY MORSE)

APPENDIX E.....APPENDIX TO APPEAL BRIEF (PREPARED BY CALDBECK TO ORIGINAL TRIAL)

APPENDIX F.....TRIAL TRANSCRIPT (OF ORIGINAL TRIAL CONDUCTED BY MORSE)

APPENDIX G.....MORSE'S JUDGMENT (OF ORIGINAL TRIAL)

APPENDIX H.....SUMMARY OF VIOLATIONS OF PRENUPTIAL CONTRACT AND AGEE/DUMONT LTD CONTRACT

APPENDIX I.....RULING OF UNITED STATES DISTRICT COURT

APPENDIX J..... ORIGINAL COMPLAINT FILED AGAINST MORSE IN VERMONT DISTRICT COURT

APPENDIX K.....2ND CIRCUIT DOCUMENTS

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

1. Jones v. Clinton.....9

2.Pulliam v. Allen 466 US 532 (p.1981).....10

3. Gould v. Gapper, S East. 345, 102 Eng. Rep. 1102 (KB 1804).....11

4. Mitchum v. Foster 407 US 225.....11

5. 407 US at 242, 92 S.Ct. @2162.....11

STATUTES AND RULES

1. FOURTH AMENDMENT.....4,5,6,7

2. THIRTEENTH AMENDMENT.....4,5,6,7

3. FOURTEENTH AMENDMENT.....4,5,6,7

4. 28 U.S.C.$1254(1).....2

5. $2 Civil Right Act of 1866 14 Stat 27.....11

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix K to the petition and is unpublished.

The opinion of the United States district court appears at Appendix I to the petition and is unpublished.

JURISDICTION

The date on which the Unites States Court of Appeals denied my case was May 11, 1999.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. $ 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Petitioner has the right to due process under the 14th amendment of the Constitution of the United States. This right was blatantly violated by defendant Judge James Morse.

2. Petitioner has the right to protection from involuntary servitude consistent with the principals of the 13th amendment of the Constitution of the United States. This right was violated by defendant Judge James Morse.

3. Petitioner has the right to be free of illegal seizure of his property, money and personal effects, another right violated by Judge James Morse. This was in violation of the 4th amendment.

4. Petitioner must be treated fairly in a court of law, and not discriminated against because of his gender or perceived social standing. All men and women must be treated as equals in a court of law, another right violated by Judge James Morse.

STATEMENT OF THE CASE

1. James Morse, the defendant, is a Vermont Supreme Court judge who presided over the divorce trial of the petitioner.

2. The petitioner and plaintiff, Lawrence Agee, was married for 6 months. The plaintiff came home one day to find his home looted, and a message on his answering machine telling him he was getting divorced.

3. There was no prior discussion of divorce. Plaintiff had no idea why he was getting divorced. Plaintiff soon discovered over $17,000 cash had been removed from his bank accounts (not marital property). His wife also departed with a $10,020 diamond ring and over $5,000 of the plaintiff's own personal property. An additional sum of $7000 was frozen in another account. Of the above funds and property, plaintiff's wife contributed nothing.

4. The plaintiff's wife convinced the plaintiff to put her name on the title to the home that the plaintiff owned. He did this 5 months into the marriage. Phone records show that his wife began contacting her attorney the next day to begin to plan the divorce.

5. The plaintiff's wife spread rumors about the plaintiff leading to the loss of his job.

6. The plaintiff was responsible for a $2850 mortgage payment. Without any income, he tried to sell his home. The plaintiff tried to sell his home but his wife prevented him from doing so unless he paid her a large sum of money.

7. Plaintiff was under extreme financial distress as a result of the theft and job loss. The plaintiff had just purchased his home prior to meeting his wife, and put down a substantial down payment. Since his wife would not allow the sale of the home, these funds were tied up.

8. At the first divorce hearing, plaintiff learned that the wife had hired an attorney whose wife was the presiding judge in the Chittenden Family court.

9. Judge Morse was then assigned to the case. James Morse is apparently friends with the wife of the opposing attorney.

10. Plaintiff requested a deposition of his wife. The request was denied by Morse. As a result, no discovery was possible prior to trial. The plaintiff had no idea why he was getting divorced.

11. Plaintiff entered the court pro se, since he had no funds left to pay an attorney. The plaintiff had asked his wife to return the stolen property but she refused.

12. Plaintiff entered the court with no discovery, and no attorney. He assumed James Morse was competent.

13. Plaintiff had asked for a 3 day trial since his life savings and his home were at stake. Morse denied this request, saying he could "wrap it up" in a day. When the plaintiff arrived at court, the case was only assigned ½ day. The trial lasted less than 2 hours. The plaintiff was barely allowed to get a word in edgewise, and was repeatedly cut off by Morse. Plaintiff had barely begun to question his wife when he was cut off. Plaintiff was not allowed to present his evidence, every time he would try to do anything, Morse found another excuse to prevent him from doing so.

14. Plaintiff entered court with a valid prenuptial agreement. Morse systematically and categorically violated every provision of the agreement.

15. Plaintiff asked that his stolen property be returned. Plaintiff asked that his wife sign a quit claim deed, and return the $10,020 diamond ring. Morse declined every request of the plaintiff and granted every wish of the wife, divesting the plaintiff of over $70,000.

16. Morse allowed plaintiff's wife to literally steal $30,000 of cash and property from the plaintiff, and instead of reprimanding her, he rewarded her by giving her another $40,000 to earn interest at 12%.

17. Plaintiff believes that Morse was reckless, hostile, and extremely prejudiced. Plaintiff believes that Morse grossly violated the plaintiffs rights without any justification. Plaintiff believes Morse used his powers as a judge as a weapon against the plaintiff, that his behavior was grossly unfair, and unconstitutional, violating plaintiffs right to due process, violating plaintiff's right to protection from involuntary servitude, and violating plaintiff's right to protection from illegal seizure of his own private property without just cause. The plaintiff has committed no crime. Morse has literally created a crime out of thin air, and inflicted a bizarre punishment upon the plaintiff that defies all sense of logic, common sense and human decency. Morse thinks that others peoples money is his for the taking to redistribute however he wishes on a whim. Morse fails to consider the plaintiff has worked hard for this money, prior to even meeting his wife, and plaintiff believes Morse had no authority by law to do what he has done.

18. Plaintiff's wife made numerous false allegations in court. Plaintiff was never allowed to address these in court, and a public record was created which is false. The plaintiff complained to the court. The court did nothing.

19. Plaintiff requested a new trial even before Morse released his decision. Plaintiff felt railroaded by Morse, and felt he was denied due process (no deposition, no discovery, a total inability to present evidence or cross examine the witness, repeatedly being cut off). By the end of the case, the plaintiff was literally overwhelmed with issues he was never allowed to address. What resulted was a court record so far from reality, it is beyond comprehension. The plaintiff has been portrayed in an extremely negative light by James Morse, and he was subjected to a judgment worse than what most criminals are subjected to. The defamation published in the record by Morse is false, inflammatory, and without any basis whatsoever other than hearsay which was turned in to findings of fact with absolutely no supporting evidence whatsoever.

20. Plaintiff requested a new trial before a competent judge. The request was denied.

21. Plaintiff appealed to Vermont Supreme court. James Morse sits on the Supreme court. The request was denied.

22. Plaintiff filed suit against Morse in District court for violation of constitutional rights 4, 14, 13). The case was dismissed because Morse was "immune".

23. Plaintiff appealed to 2nd Circuit Court of Appeals in NY. The appeal was dismissed as "frivolous".

24. Plaintiff appeals to U.S. Supreme Court. Plaintiff believes Morse should be held accountable for his actions that were performed under color of state law but they were in violation of the federally protected rights of this plaintiff. Plaintiff requests compensation for Morse's gross negligence and recovery of his $82,250, and all legal fees incurred by the plaintiff ($23,350) as a result of this negligence, and compensation for intentional infliction of emotional distress. Morse's incompetence has already led to one murder suicide. His competency must be examined in the name of justice, and he needs to be accountable for his actions, as the rest of us are. Judicial immunity is no excuse for what Morse has done, his actions are inexcusable.

REASONS FOR GRANTING THE PETITION

1. To promote justice, to prevent a blatant miscarriage of justice.

2. To notify all judges everywhere that is not OK to violate the law, to ignore someone's federally protected rights, to use the power of a governmental office to abuse and torture the very citizens who you work for.

3. To send a clear message to the courts that the courts exist for the benefit of the people, and not for the benefit of judges and lawyers.

4. To send a message that a citizens Constitutional rights are sacred, and not to be violated by anyone, not even a judge.

5. To promote a legitimate examination of the immunity of the judiciary, and to rein in judicial abuse and incompetence by holding them accountable for their actions.

6. To be consistent with the law.

7. To send a message to the judiciary that they can be held accountable for their actions just as the president of the Unites States can.

8. To uphold the rules of perjury such that a judge has a responsibility to his constituents that perjury is in fact a crime and that a judge has the ultimate responsibility to assure that people tell the truth in court.

ARGUMENT

The only issue on appeal is whether or not a claim of judicial immunity is valid under the circumstances of this case. The plaintiff fully understands the concept of judicial immunity and why this rule exists. However, the plaintiff believes that under certain circumstances, this immunity must be waived. In this case, the record will show that the judge behaved in an outrageous and inhumane fashion, and the plaintiff believes that James Morse has therefore waived his immunity.

This defendant has divested the plaintiff of $70,000 without any valid reason. This is not small change, and literally bankrupts the plaintiff and leaves him in financial ruin. In this case, the judge is treating a 6 month marriage as a crime. In addition to the financial devastation of the outrageous judgment, the plaintiff has had to appeal this judgment to the very court Morse sits, at tremendous expense to both parties (over $13,000 so far).

The plaintiff also cites that there was a prenuptial agreement (see appendix D, p.A4) that spells out in no uncertain terms the division of property in the event of divorce. Morse found this valid, and then totally disregarded it, and contorted it to fit his own agenda. At a minimum, a Supreme Court judge should have the ability to read a contract, and carry it out.

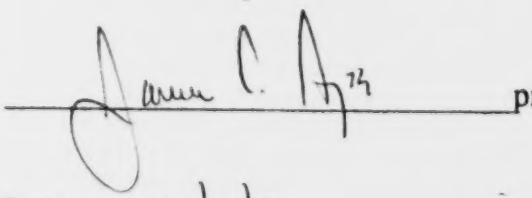
Waiver of judicial immunity is not without precedent. The plaintiff cites Pulliam v. Allen 466 US 532 "no court of appeals ever has concluded that immunity bars injunctive relief against a judge- at least 7 circuits have indicated affirmatively that there is no immunity bar to such relief and in situations where in their judgment an injunction against a

judicial officer was necessary to prevent inoperable injury to a petitioners constitutional rights, courts have granted relief." Also "there is no evidence that the absence of immunity has a chilling effect on judicial independence." In the above case, justice Blackman cited Gould v. Gapper, S East. 345, 102 Eng. Rep. 1102 (KB 1804) "it is held that a writ of prohibition would be granted not only when a court had exceeded its jurisdiction, but also when the court had misconstrued an act of parliment....The fact that the error might be corrected on appeal was deemed to be irrelevant." Also cited was Mitchum v. Foster 407 US 225 "...the very purpose of $1983 was to interpose the Federal Courts between the states and the people as guardians of the peoples federal rights- to protect the people from unconstitutional action under the color of state law whether that action be executive legislative or judicial" 407 US at 242, 92 S.Ct. @2162. Furthermore in Pulliam p1981, "we remain steadfast in our conclusion nevertheless that congress intended 1983 to be independent protection for federal rights and find nothing to suggest that congress intended to expand the common law doctrine of judicial immunity to insulate state judges completely from federal judicial review." Also cited in Mitchum v. Foster "Congress enacted 1983 and its predecessor $2 of the civil Right Act of 1866 14 Stat 27 to provide an independent avenue for protection of federal constitutional rights. The remedy was considered necessary because "State courts were being used to harass and injure individuals either because state courts were powerless to stop deprivations or were in league with those bent upon abrogation of federally protected rights.""

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



pro se

Date: 10/12/94

DIANE DERBY

Vermont Press Bureau

Family Court: Vermont's Real Judicial Hot Seat

MONTPELIER — James Morse is one-third of the "Brigham Three," a term used to describe the Vermont Supreme Court justices whom critics would like to see ousted for being too "activist."

Those critics point to the Brigham decision, which said Vermont's students were entitled to equal educational opportunities, as the strongest case in point.

But when a State House hearing was called last month to solicit public opinion about whether Morse and his colleagues should be granted six more years on the bench, it wasn't the Brigham case — nor any other Supreme Court decision — that prompted the most emotional testimony.

It was a decision Morse made while pinch-hitting on the family court bench that drew the ire of a Williston man, who described a divorce settlement that he said cost him $70,000. Morse's divorce order, the man said, had ruined his life and even had him contemplating suicide.

The words must have been chilling for Morse, who won't soon forget another divorce case he handled as a district court judge in the mid-1980s. In that case, Morse ordered a farmer to provide financial support for his wife, who lived in a trailer on the farm after the couple split.

But the woman's cupboards went bare when the farmer couldn't pay up. Morse told the farmer that he would have to sell off some of his 400 acres to meet the court's order.

Instead, the farmer went home that day, tortured his wife for hours, then shot her before turning the gun on himself. She died immediately. He died some months later.

Morse related the story to members of the Judicial

APPENDIX B

PRENUPITAL CONTRACT

NOTE: The prenupital contract does not comply with rule 33.1. This will be provided to the court upon request

APPENDIX C

AGEE/DUMONT LIMITED PARTNERSHIP

NOTE: The AGEE/DUMONT LIMITED PARTNERSHIP AGREEMENT does not comply with rule 33.1. This will be provided to the court upon request.

APPENDIX D

APPEAL BRIEF (PREPARED BY ATTORNEY GARETH CALDBECK TO ORIGINAL TRIAL CONDUCTED BY MORSE)

NOTE: The APPEAL BRIEF does not comply with rule 33.1. This will be provided to the court upon request.

APPENDIX E

APPENDIX TO APPEAL BRIEF (PREPARED BY ATTORNEY GARETH CALDBECK TO ORIGINAL TRIAL CONDUCTED BY MORSE)

NOTE: The APPENDIX does not comply with rule 33.1. This will be provided to the court upon request.

APPENDIX F

TRIAL TRANSCRIPT OF ORIGINAL TRIAL CONDUCTED BY MORSE

NOTE: The TRIAL TRANSCRIPT does not comply with rule 33.1. This will be provided to the court upon request. This document is 120 pages long.

APPENDIX G

MORSE"S JUDGMENT

NOTE: Morse's judgment does not comply with rule 33.1. This will be provided to the court upon request. This document is 6 pages long.

APPENDIX H

SUMMARY OF VIOLATIONS OF PRENUPITAL CONTRACT

SUMMARY OF VIOLATIONS OF PRENUPTIAL CONTRACT AND AGEE/DUMONT LIMITED PARTNERSHIP CONTRACT

1. Prenuptial contract states AGEE/DUMONT LIMITED PARTNERSHIP funds belong exclusively to Agee. Dumont was listed as a 3% limited partner. Dumont withdrew all funds ($7,633) from limited partnership account illegally, without consent of the general partner Agee. A/D partnership contract states specifically that Dumont cannot withdraw these funds without Agee's consent. She admitted in court she shouldn't have taken this money, and Morse still awards this money to her despite it's illegality and in direct violation of both the prenuptial contract and limited partnership contract.

2. Prenuptial agreement states gifts will be returned to the source in the event of divorce. Dumont went into an account without Agee's knowledge, and withdrew $7,200. This account was from Charles Schwab and was created with gift money from Agee's family ($12,000). Dumont's family contributed $100. Dumont froze the rest of this money, and it remains frozen and inaccessible to Agee to this day.

3. Agee requested his diamond ring be returned. This ring cost $10,020 and was a conditional gift given as a representation of a legitimate marriage, not a 6 month farce. This also violated the terms of the agreement, and a verbal agreement made between Agee and Dumont. Dumont had represented that she would return this ring in the event of divorce.

4. Dumont literally tricked Agee into contributing $1,675 into her retirement account 2 weeks before she departed. Agee requested this back, request denied by Morse.

5. The above items alone were worth $26,528, plus another $7,000 which was frozen, and remains frozen. The source of all of this money was Agee....none of this was contributed by Dumont. All of this was protected by the above contracts. None of it was returned, in direct violation of the contracts....but there is more.

6. The prenuptial agreement states that neither party must pay the other legal fees in the event of divorce. Morse blatantly disregards this, awarding Dumont over $7000 PLUS "all future legal fees".

7. The prenuptial agreement was designed to protect Agee's interest in his home. Morse finds a loophole in this contract to award her "her share of the appreciation in the marital property" when the only "appreciation" of the home existed in the mind of James Morse. He literally created $40,000 of value that did not exist.

8. Morse also awarded Dumont ½ of the tax refund of money that Agee earned mostly before he was married (prior to Aug. 16). Agee counted on this money to defray the expense of the home from the tax deduction....Dumont DID NOT contribute to the home during the marriage despite her promise to do so. Not only does Morse think that Agee must pay all household bills, all taxes, all expenses, loose his deductions, but even PAY Dumont over $3000 per month to live in his home.

9. Dumont literally robbed the home of Agee when she left.....she never returned anything to Agee despite the fact it was not hers.....and Morse allowed her to do this.

10. Dumont went on a buying spree prior to her departure. None of the items were returned.

11. The only thing awarded to Agee was a small dresser (that Agee bought). Over $70,000 was awarded to Dumont, none

of which was earned by Dumont, all of which was earned by Agee prior to the marriage. There were no marital assets....Morse created them out of thin air. Morse then has the audacity to say that "her (Dumont's) requests are "meager" considering what she has been through" when the allegations made against Agee were not only false, Morse never gave Agee a chance to speak on his own behalf.

12. Morse has taken it upon himself to blame the petitioner for this divorce. This was after he said in court "let's not get into issues of fault". The petitioner did not want to become involved in a mud slinging contest....what Morse encourages is a mud slinging party by the woman, and then placing a gag on the man. Morse tries to make a commentary on why the plaintiff was divorcing....Morse has no idea of anything. The trial was a rush job. Morse accepted false testimony as fact. Agee's wife was interested in money, she had no interest at all in the marriage. Morse has no business commenting upon a persons sex life in his judgment as this is a gross invasion of privacy, and not really something an individual should be subjected to discussing in a courtroom, it is inappropriate, it's really none of James Morse's business, and it is absurd for a judge to even print something like this in a public document. Furthermore, Morse tries to blame the plaintiff for his involvement in a lawsuit prior to his marriage. Morse completely ignored what Agee said, listening instead to an attorney that knows absolutely nothing about this prior case that Morse comments on. The case involved a theft of $8,300 that was illegally stolen from the plaintiff, Agee. Agee spent tens of thousands of dollars trying to recover this stolen property (is this Agee's fault?) through the courts that totally failed him. Rather than putting the blame on the court where it belongs, rather than blaming the thief that stole from Agee, Morse blames Agee, the victim of a serious crime, absolving the legal system of all blame. Morse's decisions and logic come right out of left field with absolutely no basis in common sense. The way Morse handles a crime is by blaming

the victim. His decisions infuriate people because they are so absurdly wrong. Is this good for the citizens of Vermont? No, it is a gross, malicious abuse of judicial powers, and an abuse of judicial immunity.

APPENDIX I

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

No. 1:98-CV-331

FILED: DEC 2 1998

LAWRENCE C. AGEE
Plaintiff

v.

JAMES MORSE
Defendant

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that pursuant to the Court's endorsed order filed Dec. 1, 1998, defendant's motion to dismiss is GRANTED. Defendant, as a state judge, is clearly immune from suit. JUDGMENT is hereby entered in favor of defendant James Morse against plaintiff, Lawrence C. Agee.

Date: Dec. 2, 1998

RICHARD PAUL WASCO
Clerk

APPENDIX J

ORIGINAL COMPLAINT FILED BY AGEE AGAINST MORSE IN VERMONT DISTRICT COURT

The above document does not comply with rule 33.1 and will be provided upon request.

APPENDIX K

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the thirteenth day of May one thousand nine hundred and ninety-nine,

Present:

Hon. John M. Walker, Jr.,
Hon. Rosemary S. Pooler,
Circuit Judges,
Hon. Constance Baker Motley
District Judge,

Filed
May 13, 1999

Lawrence C. Agee,
Plaintiff-Appellant,

v. 98-9651

James Morse,
Defendant-Appellee.

A motion having been made herein by appellee to dismiss this appeal, upon consideration thereof, it is ordered that the motion be granted because it is frivolous. See Neitzke v. Williams, 490 U.S. 319, 325 (1989)(an action is frivolous when it has "no arguable basis in law of fact"); see Pillay v. Immigration and Naturalization Service,45 F.3d 14, 16-17 (2d Cir. 1995)(this court has inherent authority to dismiss fee-paid appeals as frivolous); Mireles v. Waco, 502 U.S. 9, 11-12

(1991)(per curiam)(judicial immunity in 42 U.S.C. $1983 suits); Salahuddin v. Jones, 992 F.2d 447, 449 (2d Cir.)(per curiam), cert. denied, 510 U.S. 902 (1993)("wholly conclusory" allegations are insufficient).

FOR THE COURT:
Karen Greve Milton, Acting Clerk

By: Lucille Carr
Deputy Clerk

Supreme Court, U.S.
FILED
NOV 3 1999
OFFICE OF THE CLERK

No. 99-652

In The

Supreme Court of the United States

LAWRENCE C. AGEE
Petitioner,

vs.

JAMES MORSE
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1-11. Petitioner's first eleven Questions Presented concern allegations of Respondent's judicial acts made in the context of his role as presiding judge over Petitioner's divorce trial. These eleven questions can be reduced to one, as stated by Petitioner in his Argument, "The only issue on appeal is whether or not a claim of judicial immunity is valid under the circumstances of this case." (*Petitioner's Petition for Writ of Certiorari*, at 10). Thus, Respondent interprets Petitioner's Questions Presented 1-11 as encompassed by the following question: Whether a judge is entitled to judicial immunity for his judicial acts made within the scope of his jurisdiction as the presiding judge of Petitioner's divorce trial when he is sued by the divorce litigant for damages, declaratory judgment and injunctive relief setting aside the divorce judgment and ordering a new divorce trial.

12. Petitioner's twelfth Question Presented appears to be an allegation of the unconstitutionality of Vermont's state law allowing Supreme Court justices to sit as trial judges. Petitioner, however, failed to raise this allegation in his complaint and before the District Court and the Court of Appeals.

TABLE OF CONTENTS

Questions Presented for Review ..... *i*

Table of Contents ..... *ii*

Table of Authorities ..... *iii*

Statement of the Case 1

Argument for Denying the Petition 4

A. Petitioner Fails to Meet the Standard for Granting Certiorari. 4

B. The petition for certiorari should be denied because Vermont law grants Respondent absolute immunity from suit for his judicial acts on Petitioner's state law claims. 4

C. The petition for certiorari should be denied because Petitioner's claims for damages under 42 U.S.C. §1983 are barred by the federal doctrine of judicial immunity. 6

D. The petition for certiorari should be denied because Respondent's claims under 42 U.S.C. § 1983 for injunctive relief – setting aside a judgment and ordering a new trial -- are also barred by the doctrine of judicial immunity. 8

Conclusion 9

TABLE OF AUTHORITIES

Cases Cited:

Dumont v. Agee, No. 98:293, slip op., (Vt. April 21, 1999), 1999 Vt. Lexis 144 (S.Ct. 1999) 2, 4

LaPlaca v. Lowery, 134 Vt. 56, 58, 349 A.2d 235 (1975) 5, 6

Mireles v. Waco, 502 U.S. 9, 11-12 (1991) (per curiam) 1, 7

Pierson v. Ray, 386 U.S. 547, 554 (1967) 6, 7

Pulliam v. Allen, 466 U.S. 522 (1984) 8, 9

United States v. Alvarez-Sanchez, 511 U.S. 350 (1994) 2, 3

Statute Cited:

42 U.S.C. §1983 ..... 7, 8

Rule Cited:

Rules of the Supreme Court of the United States, Rule 10 4

STATEMENT OF THE CASE

Respondent is a Justice of the Vermont Supreme Court who continues occasionally to sit as a judge in the Vermont trial courts. Petitioner was a litigant in a divorce trial over which Respondent presided. Unhappy with the results of his divorce trial, Petitioner filed a suit in the United States District Court for the District of Vermont alleging that Respondent's conduct as trial court judge was improper and deprived him of his state and federal Constitutional rights and that Vermont's divorce law was unconstitutional. Respondent moved to dismiss Petitioner's suit on the grounds that Respondent was entitled to immunity for his judicial acts as a Vermont trial court judge. The District Court granted Respondent's motion to dismiss.

Petitioner appealed the dismissal to the Second Circuit Court of Appeals. Respondent moved to dismiss Petitioner's appeal on the grounds that it was frivolous and without merit. The Second Circuit granted Respondent's motion to dismiss, holding that the appeal was frivolous, citing *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)(per curiam) as precedent for the application of the doctrine of judicial immunity to actions under 42 U.S.C. § 1983.

In a parallel action, Petitioner appealed his divorce decree to the Vermont Supreme Court, where the divorce

judgment was affirmed. *Dumont v. Agee*, No. 98:293, slip op., (Vt. April 21, 1999), 1999 Vt. Lexis 144 (S.Ct. 1999)(decision published without opinion).

Petitioner's factual allegations are based on Respondent's handling of Petitioner's divorce trial -- alleged rudeness to Petitioner and truncation of Petitioner's time to put on evidence at trial, alleged bias in the content of the judgment, alleged favoritism to Petitioner's ex-wife; weighing of credibility of the witnesses allegedly in favor of Petitioner's ex-wife; alleged mis-interpretation of the parties' pre-nuptial agreement; etc.* Respondent disputes these allegations, but the falsity of these allegations is irrelevant to the case. There is no dispute that all of Petitioner's allegations concern Respondent's judicial acts made within Respondent's general authority as the presiding judge over Petitioner's divorce trial. Thus, the sole issue in this case is whether Respondent is entitled to judicial

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* Petitioner has implied two new factual allegations in his Petition for Certiorari that were not raised below: the denial of his request to depose his wife before trial and some improper conduct of the Respondent's law clerk in the divorce trial. Because these allegations are not found in Petitioner's complaint and were not raised before the District Court or the Court of Appeals, they are waived before the United States Supreme Court. *See United States v. Alvarez-Sanchez*, 511 U.S. 350,360 n.5 (1994). Moreover, they too concern judicial acts by Respondent and would not affect his judicial immunity.

immunity in Petitioner's suit for damages, declaratory judgment and injunctive relief of setting aside the divorce judgment and ordering a new divorce trial.

To the extent that any of Petitioner's Questions Presented raise any other issues, Respondent objects to them on the grounds that they were not raised in Petitioner's Complaint, at the District Court or at the Court of Appeals. Consequently, Respondent notes that any such arguments will not be supported by the record. As noted above, Respondent believes that Petitioner's Questions 1-11 all concern Respondent's judicial acts and therefore pertain to the issue of judicial immunity. Petitioner's twelfth Question Presented appears to be an allegation of the unconstitutionality of Vermont's state law allowing Supreme Court justices to sit as trial judges. Because this argument was not raised at the District Court or the Court of Appeals, it is waived before the United States Supreme Court. *United States v. Alvarez-Sanchez*, 511 U.S. 350,360 n.5 (1994)(where respondent failed to raise 4th amendment argument in the District Court or Court of Appeals, Court found "no exceptional circumstances that would warrant reviewing a claim that was waived below" and adhered to its practice of declining to address arguments not raised below).

Also, Respondent points out that Petitioner misstates the

legal proceedings in his state court appeal of his divorce judgment when he implies that Respondent sat on the panel that heard his appeal to the Vermont Supreme Court and that the Vermont Supreme Court denied his request for an appeal. (Petitioner's Petition for Writ of Certiorari, at 7, ¶ 21). Justice Morse recused himself from Petitioner's case at the Vermont Supreme Court. The Court considered Petitioner's appeal on the merits and affirmed the divorce judgment. *Dumont v. Agee*, No. 98:293, slip op., (Vt. April 21, 1999), 1999 Vt. Lexis 144 (S.Ct. 1999)(decision published without opinion). These facts, however, are irrelevant to Petitioner's present case.

ARGUMENT FOR DENYING THE PETITION

A. Petitioner Fails to Meet the Standard for Granting Certiorari.

Pursuant to the Rules of the Supreme Court of the United States, "a petition for certiorari will be granted only for compelling reasons." Rule 10. Examples of such "compelling reasons" are: splits amongst the Circuit Courts, or between a state supreme court and a Circuit Court; blatant departure from judicial procedure; conflict with a United States Supreme Court decision; or an important matter of first impression for the United States Supreme Court. *Id.* Petitioner cannot

demonstrate any of these compelling reasons because there is no conflicting case law: judges are clearly entitled to judicial immunity for their judicial acts made within their jurisdiction.

B. The petition for certiorari should be denied because Vermont law grants Respondent absolute immunity from suit for his judicial acts on Petitioner's state law claims.

The Vermont common law doctrine of judicial immunity grants absolute immunity to judges for their judicial acts: "Immunity from liability in favor of the judges rests upon the broad ground of public policy, which declares that a judge, for acts done by him in his public capacity, is absolutely privileged from action." *LaPlaca v. Lowery*, 134 Vt. 56, 58, 349 A.2d 235 (1975)(*quoting Vaughn v. Congdon*, 56 Vt. 111, 128, 48 A.R. 758 (1883)(Powers, J. dissenting)(emphasis in original). Thus, pursuant to Vermont's absolute judicial immunity doctrine, the only issue is whether a claimant's allegations are based upon the "performance of an act which was judicial, and within [the judge's] general authority." *Id.* The policy behind this doctrine is to protect the judicial decision-making process "by making the judges free, independent and fearless in the discharge of their duties." *Id.*

Petitioner's allegations of misconduct are all based on Respondent's handling of Petitioner's divorce trial. Thus, these allegations refer to judicial acts, taken within Respondent's general authority as the presiding judge over Respondent's divorce trial. Moreover, Petitioner failed to assert in his complaint that the factual allegations of which he complained were non-judicial or outside the general authority of Respondent, and "such allegations were an essential part of his complaint if he was to avoid dismissal of his action." *Id.* at 59.

Since Petitioner's state claims relate only to Respondent's judicial acts taken within his general authority as presiding judge over Petitioner's divorce, Respondent is protected from the Vermont law claims by Vermont's doctrine of absolute judicial immunity.

C. The petition for certiorari should be denied because Petitioner's claims for damages under 42 U.S.C. §1983 are barred by the federal doctrine of judicial immunity.

The federal common law contains a doctrine of judicial immunity which grants judges absolute immunity from suits for damages for judicial acts. *Pierson v. Ray*, 386 U.S. 547, 554

(1967). The basis of this doctrine is that a judge should not be chilled from making controversial decisions. As the Court noted, a judge's "errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption." *Id.*

The United States Supreme Court has explicitly held that Congress did not abrogate absolute judicial immunity from suits for damages when it enacted 42 U.S.C. §1983. *Pierson*, 386 U.S. at 554. Moreover, judicial immunity is not waived by allegedly malicious, corrupt or outrageous conduct. *Mireles v. Waco*, 502 U.S. 9, 11 (1991)("[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial."). Instead, judicial immunity is overcome only in two circumstances: where judges commit non-judicial acts or take actions with clear or complete absence of jurisdiction. *Id.* at 11-12.

As stated above, Petitioner's factual allegations concern Respondent's conduct as presiding judge at Petitioner's divorce trial. Petitioner has made no allegation of non-judicial conduct, nor has Petitioner alleged that Respondent's conduct at the

divorce trial or the resulting judgment were taken in complete absence of jurisdiction. Because Petitioner's factual allegations are based entirely on Respondent's judicial acts as presiding judge of his divorce trial, neither of the two exceptions to judicial immunity apply, and Respondent has absolute immunity from Appellant's suit for damages under 42 U.S.C. § 1983.

D. The petition for certiorari should be denied because Respondent's claims under 42 U.S.C. § 1983 for injunctive relief – setting aside a judgment and ordering a new trial -- are also barred by the doctrine of judicial immunity.

Petitioner also seeks certain injunctive relief: setting aside his divorce judgment and ordering of a new trial. These claims are also barred by judicial immunity. In *Pulliam v. Allen*, the United States Supreme Court established a narrow waiver of judicial immunity in cases involving claims under 42 U.S.C. §1983. 466 U.S. 522 (1984). The Court specifically held that such a waiver was limited to cases where the claimant sought to enjoin prospective unconstitutional behavior. Id. The *Pulliam* Court noted that the high standards for injunctive relief will provide formidable hurdles that will prevent frivolous

litigation against judges by dissatisfied litigants, specifically that these litigants will have to prove the inadequacy of any remedy at law and the serious risk of irreparable harm.

Petitioner's requests for injunctive do not seek to bar prospective unconstitutional behavior. Instead, he seeks only the reversal of the prior judgment, a new trial, and the sealing of the prior divorce file and attorney's fees. In other words, Petitioner seeks what he could have obtained through a successful appeal of his divorce judgment. For this reason, Petitioner is unable to mount the "formidable hurdles" described in *Pulliam*, the facts necessary to support a claim for injunctive relief. Petitioner cannot show that he has no adequate remedy at law or that he faces a serious risk of irreparable harm. Appellant had an adequate remedy at law: he appealed his divorce judgment. Petitioner is the dissatisfied litigant described in *Pulliam*, and his claims are barred by judicial immunity.

CONCLUSION

The petition for certiorari should be denied because Petitioner has failed to show any compelling reasons for granting it. There is no conflicting case law. Instead, all of the case law establishes that judges are immune from suit for their

judicial acts made within their jurisdiction, excepting the limited circumstances of the *Pulliam* case, where injunctive relief is necessary to bar prospective unconstitutional behavior. Petitioner cannot show these limited circumstances because the relief he seeks is merely a reversal of his divorce decree. Respondent is immune from such a suit and the petition should be denied.

Respectfully submitted,

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